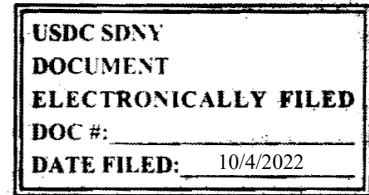


**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**



RODOLFO MONTER HERNANDEZ,

Plaintiff,

19-CV-01257 (ALC)(SN)

-against-

ORDER TO SHOW CAUSE

**99 THAI PLAYGROUND LLC d/b/a THAIMEE
TABLE, et al.,**

Defendants.

SARAH NETBURN, United States Magistrate Judge.

This wage-and-hour case has a complicated, and somewhat tortured, history. The Court's current concern is whether Defendant Ngamprom Thaimmee, a/k/a Hong Thaimmee ("Thaimmee"), was properly served.

I. Service on Thaimmee

Plaintiff filed his original complaint on February 8, 2019, seeking relief for violations of the FLSA and NYLL. ECF No. 1. Thaimmee was the owner and head chef of the now-closed restaurant Thaimmee Table, where Plaintiff is alleged to have been a delivery worker. The Court issued an electronic summons as to Thaimmee on February 11, 2019. Following the filing of the First Amended Complaint, the Court issued a second summons as to Thaimmee on April 26, 2019. Plaintiff filed an affidavit of service indicating that service was effected on Thaimmee on May 14, 2019, by service at the restaurant Thaimmee Table. ECF No 38. Based on proof of the May 14, 2019 service, the Court issued a Certificate of Default on February 26, 2020. ECF No. 78.

Separately, in connection with an Order to Show on Plaintiff's motion for default, Defendant Matt Bruck challenged his service on May 14, 2019, at Thaimmee Table in part because

“during the week of April 29, 2019, a New York City Marshall padlocked the restaurant and returned the property to the building’s owner.” ECF 101. Bruck submitted photos that purport to establish that the Marshal executed a warrant on April 23, 2019, at which time the landlord took legal possession of the premises. Although the Court did not grant Bruck’s motion to dismiss for ineffective service, it extended the time to allow Plaintiff to serve Bruck. ECF No. 108.

On this record, at a subsequent hearing, the Court addressed whether Thaimée could have been served on May 14, 2019. Plaintiff responded in two ways. First, he submitted an affidavit of service purporting to establish that Thaimée was served at Thaimée Table on April 3, 2019, before the restaurant was allegedly closed, by delivering the summons and original complaint to a co-worker named “Leo Smith.” ECF No. 137-1. This affidavit of service has never been filed with the Court and no Certificate of Default has been issued in connection with it. Second, he submitted a log and photo from process server Andrew Meisel, which purports to establish that he actually served the summons and Amended Complaint on May 14, 2019, by delivering them to a co-worker named “Joseph Smith,” and that the restaurant was open at that time.

II. Order to Show Cause

The Court has serious concerns as to whether Thaimée has been properly served. With respect to the only affidavit of service filed with the Court, the evidence suggests that service on May 14, 2019, by delivering the summons and Amended Complaint to a co-worker at Thaimée Table, is not possible. In addition to the proof submitted by Defendant Bruck – including the executed warrant by the City Marshal – news articles and reliable internet pages confirm that Thaimée Table was closed by at least April 30, 2019. *See, e.g.,* <https://www.opentable.com/r/thaimée-table-ngam-new-york> (reviews on April 30, and May 4, 2019, stating that the restaurant is “closed”). Plaintiff’s affidavit of service dated April 3, 2019, was never filed with the Court

and no Certificate of Default has been entered in connection with that affidavit. Process server Andrew Meisel's trustworthiness is certainly in doubt.

Additionally, the Court's own research suggests that Thaimee is a successful and well-known "chef, entrepreneur, and philanthropist," and "one of the most visible faces of Thai food in the US." See <https://www.hongthaimee.com/chef-hong-thaimee/>. She is hardly someone who should be difficult to serve.

CONCLUSION

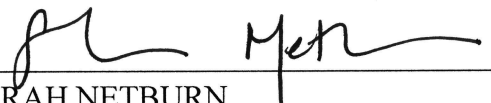
Accordingly, Plaintiff is ORDERED to serve this Order upon Defendant Ngamprom Thaimee a/k/a Hong Thaimee. Plaintiff must undertake every effort to serve Thaimee, including without limitation:

- Personal service at the restaurant Thaimee Love, located at 116 West Houston Street, New York, NY 10012;
- Calling Thaimee Love at (347) 325-2557 to request assistance with service;
- Contacting Thaimee's in-house press contact through the website at <https://www.hongthaimee.com/press/>

By October 14, 2022, Plaintiff must file an attorney affidavit attesting to all efforts undertaken to serve Thaimee and the results of that effort. Absent further order of the Court, by October 28, 2022, Thaimee is ORDERED TO SHOW CAUSE why the Court should not enter default against Defendant Ngamprom Thaimee a/k/a Hong Thaimee based on the April 3, 2019 affidavit of service and assess damages against her in accordance with Plaintiff's Proposed Findings of Fact and Conclusions of Law and the supporting record. See ECF Nos. 119-120.

SO ORDERED.

DATED: October 4, 2022
New York, New York



SARAH NETBURN
United States Magistrate Judge